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MAR. PUTNAM AND ROBERT PUTNAM,

COMMISSIONERS OF THE GENERAL REVENUE

ON PETITION FOR A WRIT OF HABEAS CORPUS FOR THE UNITED  
STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

NEW ORLEANS FOR THE DEFENDANT

WILLIAM S. WELBY,

CLERK OF COURT

Department of Justice, Washington, D.C.

# In the Supreme Court of the United States

OCTOBER TERM, 1955

No. 610

MAX PUTNAM AND ELIZABETH PUTNAM,  
PETITIONERS

v.

COMMISSIONER OF INTERNAL REVENUE

*ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED  
STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT*

## MEMORANDUM FOR THE RESPONDENT

The question presented is whether the taxpayer's loss resulting from his payment in 1948 as guarantor of a corporation's unpaid debt is deductible in full as an ordinary non-business loss under Section 23 (e) (2) of the Internal Revenue Code of 1939, as taxpayers contend, or as a non-business bad debt deductible only to the limited extent permitted by Section 23 (k) (4) as a short-term capital loss, as both courts below held.<sup>1</sup>

<sup>1</sup> Taxpayers alternatively contended below that the loss was deductible in full as a business bad debt under Section 23 (k) (1), a contention which has been abandoned in the petition. A separate issue litigated below, as to whether a loss claimed in 1947 was deductible as a business or non-business bad debt, has likewise been abandoned.

We submit that the decision below, affirming that of the Tax Court, is correct for the reasons stated in the opinions below and in the dissenting opinion in *Cudlip v. Commissioner*, 220 F. 2d 565 (C. A. 6th), which presented the same question. However, as taxpayer alleges, the decision below is in conflict with those of the courts of appeals in the *Cudlip* case and in *Pollak v. Commissioner*, 209 F. 2d 57 (C. A. 3d), reversing the Tax Court, and with *Edwards v. Allen*, 216 F. 2d 794 (C. A. 5th), affirming the district court. Accordingly, the Commissioner does not oppose the issuance of a writ of certiorari.

Respectfully submitted,

SIMON E. SOBELOFF,  
*Solicitor General.*

FEBRUARY 1956.